

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
IP-Enabled Services)	WC Docket No. 04-36
)	
E911 Requirements for IP-Enabled)	WC Docket No. 05-196
Service Providers)	
)	
Cypress Communications, Inc.)	
Petition for Extension and Limited Waiver)	

PETITION FOR EXTENSION OF TIME AND LIMITED WAIVER

Cypress Communications, Inc. (“Cypress”), pursuant to Section 1.3 of the Commission’s Rules,¹ requests that the Commission grant it an extension of time to comply with and limited waiver of the obligations imposed on Cypress pursuant to Commission Rules 9.5(b) adopted in the *First Report and Order* in the above-captioned proceedings.² As explained in detail below, despite having made substantial progress toward meeting the requirements of the *VoIP E911 Order*, Cypress will be unable to comply fully for all of its customers by the November 28, 2005 deadline. Accordingly, Cypress requests a six-month extension of time and limited waiver in order to comply with those obligations.

¹ 47 C.F.R. § 1.3.

² *IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, WC Docket Nos. 04-36 & 05-196, FCC 05-116 (released June 3, 2005) (“*VoIP E911 Order*”). Commission Rule 9.5 (b) and (c), 47 C.F.R. §§ 9.5(b) and (c), implementing the VoIP E911 Order are scheduled to take effect on November 28, 2005.

I. DESCRIPTION OF THE PETITIONER

Cypress is the leading provider of premium, in-building communications services to businesses located in commercial office buildings. Cypress currently operates in 25 major metropolitan U.S. markets. As the nation's largest provider of in-building, managed communication solutions, Cypress supplies advanced phones, unlimited local and long distance calling, business-class Internet connectivity, firewalls, security and VPN solutions, audio/web conferencing and business television solutions. Cypress has provided a description of its service offerings to the Commission in its compliance report submitted on the same date as this Petition.³ Pursuant to the definitions adopted in the *VoIP E911 Order*, Cypress is a provider of interconnected Voice over Internet Protocol ("VoIP") services.⁴

Cypress has taken a number of steps to comply with the Commission's VoIP E911 rules. Cypress has received affirmative acknowledgments from 100% of its customers as required by 47 C.F.R. § 9.5(e)⁵ and is in compliance with the registered location requirement of 47 C.F.R. § 9.5(d). Cypress also is in compliance with the E911 service requirements of 47 C.F.R. § 9.5 (b) and (c) for the overwhelming majority of its customers. As discussed in greater detail in Section III below, Cypress has contracted with New Global Telecom ("NGT") to implement an E911

³ See Letter to Marlene H. Dortch from P. Gagnier, WC Docket Nos. 04-36 and 05-196 (filed November 28, 2005) ("*Cypress Compliance Report*")

⁴ See 47 C.F.R. § 9.3.

⁵ Cypress has filed four status reports addressing the Company's efforts to notify its customers of the limitations associated with its VoIP 911 service and to obtain affirmative acknowledgments from those subscribers stating that they understand those limitations. Those reports were filed in WC Docket No. 04-36 on August 10, September 1, September 22, and October 25, 2005. Cypress notified the Commission that it had received affirmative acknowledgements from 100% of its customers in its Compliance Report filed with the Commission. See *Cypress Compliance Report* at page 1.

solution that complies with the Commission's Rules. As a result, Cypress currently provides full E911 service to 93% of its VoIP subscribers.

Despite the substantial progress it has made, Cypress will not be able to provide E911 service in full compliance with the *VoIP E911 Order* by November 28, 2005 for approximately 7% of its customers (although as discussed below all Cypress customers will have access to emergency services). Cypress requires additional time to implement its E911 solution for those customers. Based on its discussions with NGT, Cypress estimates that it will require an additional six months to make full E911 service available to all of its VoIP customers.

II. SPECIFIC WAIVERS REQUESTED

Cypress' offers a fixed VoIP service to its customers; Cypress's consumer premises equipment will not function if it is removed from a customer's location.⁶ As a result, Cypress requires a limited waiver of the Commission's rules only for those customers that are located in areas in which NGT has not yet deployed its VoIP E911 service. Specifically, Cypress's customers located in Denver, Indianapolis, Los Angeles, Oakland, Portland, San Diego, and Tampa will not have a complete VoIP E911 solution by November 28, 2005.⁷ Cypress respectfully requests a limited waiver of and six-month extension to implement Commission Rules 9.5 (b) and (c) in those markets.

⁶ Cypress does allow customers to obtain telephone numbers from distant rate centers for inbound calls. This service does not affect Cypress's ability to comply with E911 requirements as all outbound calls are originated from a customer's geographically assigned telephone number.

⁷ A number of Cypress's customers in the Los Angeles market are currently served by Covad Communications ("Covad") and are served by Covad's E911 service. Cypress understands that Covad's E911 solution complies with the requirements of the *VOIP E911 Order*. Cypress is migrating those customers to NGT's platform. As a result of the migration, four customers will temporarily be without full E911 service. Those customers will have access to NGT's operator-assisted 911 service described below until full E911 service can be provided.

III. STANDARD OF REVIEW

Section 1.3 of the Commission's Rules states that the Commission may waive its rules for good cause where the facts of a particular case make strict compliance inconsistent with the public interest and when the relief requested will not undermine the policy objective of the rule in question.⁹ To prevail, a petitioner must demonstrate that application of the challenged rule would be inequitable, unduly burdensome, or contrary to the public interest.¹⁰

The Commission's approach to requests for waivers in the wireless area is illustrative. Section 1.925(b)(3) of the Commission's Rules is comparable to Section 1.3 and provides that the Commission may grant a request for waiver if

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹¹

In the wireless E911 context, the Commission has stated that technical infeasibility and delays beyond the control of the carrier, including the inability to obtain required products or services despite good faith efforts by a petitioner, is reason to grant a waiver.¹²

⁹ 47 C.F.R. § 1.3. *See Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *see also Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

¹⁰ *Wait Radio*, 418 F.2d at 1159.

¹¹ 47 C.F.R. § 1.925(b)(3).

¹² *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Phase II Compliance Deadlines for Tier III Carriers*, CC Docket No. 94-102, Order, FCC 05-79, released April 1, 2005 ("*Wireless E911 Tier III Second Waiver Order*") at ¶ 10.

IV. PETITIONER MEETS THE STANDARD FOR GRANTING A WAIVER

A. Unusual Factual Circumstances Justify the Requested Waivers

Cypress has been searching for a means to provide E911 to its VoIP customers since it made the decision to offer a VoIP service. Cypress began discussions with NGT regarding its VoIP service in 2004, entered into a Master Service Agreement with NGT in March 2005, and recently contracted with NGT to provide a full E911 solution across Cypress's service footprint.

NGT's solution is known as SafeCall® E911 Service. It utilizes Intrado's network capabilities and services provided by other Emergency Service Gateway Providers ("ESGPs") to provide VoIP E911 service.¹³ The SafeCall® E911 Service provides Cypress with Subscribers' Registered Address Location management, web-based updating, Interactive Voice Response updating, and call center services where a live operator will answer failed emergency calls 24 hours a day, seven days a week. As discussed further below, SafeCall® E911 Service will be available to substantially all of Cypress's VoIP customers by November 28 and to Cypress's remaining customers shortly thereafter.

Cypress, through NGT, has undertaken a number of efforts to meet the Commission's VoIP E911 requirements. For example, NGT, together with its underlying provider, Intrado, is working diligently to increase the coverage area for E911 services. Cypress understands that Intrado has contracted with Qwest, SBC, and Verizon and is currently working with other ESGPs to enhance its coverage. NGT and Cypress are working with other ESGPs, as well some of NGT's CLEC customers, to provide additional coverage for SafeCall® E911 Service. However,

¹³ NGT uses Intrado's network to provide its VoIP E911 service, offering what they refer to as "VoIP Emergency Call Service" ("vECS"). Although vECS provides a number of solutions in the provision of E911 services, it is not a complete solution given the lack of complete coverage by Intrado's underlying VoIP E911 network solution.

as the Commission is aware, adding network providers is a difficult and time-consuming process. Some network providers are wary of contracting to terminate E911 calls from telephone numbers that are not directly provisioned by them. While some network providers will provide E911 service for third-party provisioned telephone numbers, there are many operational, commercial, testing and technical issues that need to be resolved. Issues outside of Cypress's and NGT's control have been the most difficult to manage, whether it is managing vendors to work together; waiting to acquire appropriate routing information, or waiting for PSAP testing.

Furthermore, Cypress has completed the following work towards obtaining registered location information from its VoIP customers: (1) Cypress has collected status and end-user addresses for every telephone number on its TelPack platform or in inventory and has submitted addresses to NGT for validation; (2) Cypress has submitted its customer addresses to NGT for validation; (3) Cypress has worked with its customers and NGT to resolve address data errors (initial address validation stage); (4) Cypress has worked with its customers and NGT to resolve any outstanding data errors (final address validation and E911 availability stage); and (5) Cypress began sending confirmation to all customers regarding their service status as of November 28th.

As a result of these efforts, Cypress is substantially in compliance with the requirements of 47 C.F.R. § 9.5. Cypress is in full compliance with the affirmative acknowledgment and registered location requirements. As of November 28, NGT will be able to provide its SafeCall® E911 Service in 18 of Cypress's 25 markets, which covers 93% of Cypress's customers. Ten customers, representing just 7% of Cypress's VoIP customers, will be outside of the SafeCall® E911 Service area as of November 28. As discussed below, Cypress expects that the majority of

those customers will have full E911 service by December 2005 and that all customers will have E911 service by the end of the first quarter of 2006.

Moreover, even the small number of Cypress customers who will not have SafeCall® E911 Service will have access to emergency services. In those areas where SafeCall® E911 Service is not available, NGT is contractually required to provide an emergency operator-assisted 911 service called SafeCall® Operator Assisted 911 Service. Under this interim solution, 911 calls placed by Cypress subscribers located outside the service for SafeCall® E911 Service will be routed to an emergency call response center (“ECRC”). The ECRC will have operators available 24 hours a day, 7 days a week. The operators will have access to the subscriber’s Registered Location and callback number. The ECRC will provide a “soft transfer” of the 911 call to the appropriate 911 dispatcher or to a local exchange telephone line of the geographically appropriate PSAP. The ECRC then will communicate the Registered Location and call back number prior to transferring the actual call. Thus, none of Cypress’s customers will be without access to emergency services.

A factor that has complicated NGT ability to provide SafeCall® E911 Service throughout the Cypress service area is the fact that NGT is dependant on the efforts of third parties, including the RBOCs and PSAPs, to deploy an E911 solution. Circumstances beyond NGT’s control impact Cypress’s ability to deploy an E911 solution to its customers. For example, NGT reports that in certain areas, PSAPs are either declining or being advised to decline entering into agreements with VoIP providers due to the lack of legislation protecting VoIP providers and PSAPs from any liability that may result from mistakes that may arise in the routing or handling of 911 calls. As the Commission is aware, wireline and wireless carrier are legally protected

from mistakes that may occur with the routing or handling of 911 calls. Neither NGT nor Cypress has the ability to resolve these issues on its own.

The Commission also recognized in the *VoIP E911 Order* that the timeframe for requiring the deployment of an E911 solution was “aggressive.”¹⁵ In fact, deployment of an E911 solution for a new technology within 120-days is without precedent. VoIP providers, third-party solution providers, VoIP positioning companies, state and local E911 officials, and RBOCs are faced with unique issues to resolve and in the midst of developing a standard for the delivery of VoIP E911 calls.¹⁶ The 120-day implementation timeframe has not allowed enough time for the industry to develop a comprehensive solution. Given the novel issues that arise in deploying a VoIP E911 solution, coupled with the 120-day timeframe, it was simply not possible for the industry to develop a comprehensive VoIP E911 solution.

As the Commission has found previously, delays that are beyond the control of a provider or the inability of a provider to obtain required products or services despite good faith efforts, provides reason to grant a waiver.¹⁷ Cypress has made good faith efforts to obtain an E911 solution that complies fully with the *VoIP E911 Order*, has made substantial progress toward full compliance, and expects to be in full compliance for all customers in the near future. Cypress accordingly submits that the unusual factual circumstances associated with its deployment of a VoIP E911 solution justify the limited relief Cypress seeks.

¹⁵ *VoIP E911 Order* at ¶ 37.

¹⁶ See IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers, Reply Comments of NENA, WC Docket Nos. 04-36 & 05-196 (filed Sept. 12, 2005) (stating that NENA was still in the process of developing the standard, and has sought industry comments on a preliminary proposal).

¹⁷ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Phase II Compliance Deadlines for Tier III Carriers*, CC Docket No. 94-102, Order, FCC 05-79, released April 1, 2005 (“*Wireless E911 Tier III Second Waiver Order*”) at ¶ 10.

B. Grant of an Extension of Time and Limited Waiver to Cypress is in the Public Interest; Strict Enforcement of the November 28 Deadline Will Thwart the Purposes of the Commission's Rules

Strict adherence to the requirements of the *VoIP E911 Order* would be inconsistent with the public interest with respect to Cypress. Cypress has made good faith efforts to comply with the requirements and has made substantial progress toward full compliance. Moreover, Cypress has a plan for full compliance. However, for reasons that are largely beyond its control, Cypress will not be able to provide full E911 service to all of its customers by November 28. Demanding strict compliance with the *VoIP E911 Order* will not change that fact or further the Commission's goal of providing E911 to all consumers, but will only punish Cypress for its efforts to date. It could result in the suspension of service to Cypress's customers and prohibit Cypress from accepting new customers. The result very well could be that Cypress will be less able ultimately to comply with the *VoIP E911 Order*. Customers will remain without E911 service, as Cypress will not have adequate resources to deploy a ubiquitous E911 solution, and Cypress's ability to compete in the VoIP market will be weakened. Such a result would not serve the public interest and would thwart the goals of the *VoIP E911 Order* and the Commission's mandate to foster competition. Accordingly, a limited waiver of the requirements of the *VoIP E911 Order* with respect to Cypress is necessary and is in the public interest.

1. Cypress's Plan to Achieve Full Compliance

In addition to the steps that it has already taken to implement the requirements of the *VoIP E911 Order*, Cypress has taken steps to achieve full compliance within a reasonable period. Grant of this Petition will give Cypress the time and resources to carry out its compliance plan. Cypress has been advised by NGT that the SafeCall E911 Service will be available to 93% of Cypress's customers on November 28. NGT plans to increase its coverage according to a phased implementation that will result in providing full E911 coverage to all of Cypress's customers

within six months. Specifically, based on NGT's representations, Cypress believes that it can come into full compliance according to the following timetable:

- By December 2005, Cypress will have full E911 coverage for its customers in Denver, Oakland, Portland, San Diego, and Tampa.
- By the end of the first quarter of 2006, Cypress will have full E911 coverage for its customers in Indianapolis and Los Angeles.

2. The Relief Cypress Seeks is in the Public Interest

In light of the circumstances described above, grant of a limited waiver and extension of time to Cypress is in the public interest. Cypress has made good faith efforts to comply with the requirements of the *VoIP E911 Order*. It has met the requirements of Rule 9.5 (d) and (e) for 100% of its customers and meets the requirements of 9.5(b) and (c) for 93% of its customers. Cypress is working closely with NGT to ensure that Cypress's remaining customers will have full E911 access within a short period of time.

By demanding full compliance with the *VoIP E911 Order* by November 28, the Commission will make it more difficult for Cypress to come into full compliance. Strict adherence to the *VoIP E911 Order* could require Cypress to discontinue its services to some customers and to cease accepting new customers.¹⁸ These actions would deprive existing customers of access to Cypress's VoIP services and destroy Cypress's relationships with those customers. In addition, the ability of Cypress to attract new customers would be severely hampered. The loss of current customers and the inability to accept new customers will deprive

¹⁸ While the Enforcement Bureau has indicated that it is not "requiring" providers to disconnect current customers, the full Commission has not addressed this issue, Commission Rule 9.5 remains fully in effect, and even the Bureau has made no commitment not to pursue enforcement actions against providers that continue to provide service. In particular, it is unclear whether VoIP providers can continue to serve existing customers who change their registered location after November 28. Thus, the fact remains that non-compliant VoIP providers are in the untenable position of courting an enforcement action if they do continue to provide service to existing customers.

Cypress of the ability to maintain or expand its user base and revenues. This would cause Cypress extreme economic hardship. More important for purposes of this Petition, the loss of those revenues would limit Cypress's ability to pay for the deployment of E911 service and make it less likely that Cypress will be able to comply in a timely manner with the requirements of the *VoIP E911 Order*. Such a result would not be in the public interest.

C. Grant of the Petition will not Undermine the Policy Objective of the *VoIP E911 Order*

Cypress has worked, and is continuing to work, to implement an E911 solution that meets the requirements of the *VoIP E911 Order*. Grant of the Petition will not undermine the policy goal that customers of interconnected VoIP providers have access to emergency services. Cypress is not requesting an exemption from or indefinite waiver of the rules. Rather, Cypress merely seeks a short period of additional time so that it can meet those requirements fully for all of its customers. In other contexts—for example, wireless E911 and CALEA—the Commission has issued limited waivers and extensions of time despite significant public interests because it recognized that limited waivers do not undermine the objectives of those rules. The situation here is the same. Cypress's limited request for relief will not impair the public safety goals that underlie the Commission's new rules. Accordingly, the Commission should grant the Petition.

VI. CONCLUSION

For the reasons set forth above, Cypress respectfully submits that grant of this Petition for extension of time and limited waiver serves the public interest.

Respectfully submitted,

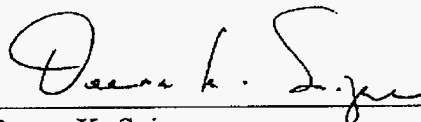
A handwritten signature in black ink, appearing to read "Paul O. Gagnier", is written over a horizontal line. The signature is stylized with a large, sweeping loop at the end.

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CERTIFICATION

I, Deena K. Snipes, state that I am Executive Director of Legal/Business Affairs, of Cypress Communications, Inc.; that I am authorized to submit the forgoing VoIP E911 Extension and Limited Waiver Petition on behalf of Cypress Communications, Inc.; that the Petition was prepared under my direction and supervision; and I declare under penalty of perjury that the Petition is true and correct to the best of my knowledge, information, and belief.



Name: Deena K. Snipes

Title: Executive Director of Legal/Business Affairs
Cypress Communications, Inc.